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13 IN THE UNITED STATES DISTRICT COURT
14 FOR THE DISTRICT OF MONTANA
GREAT FALLS DIVISION

15 CHRISTOPHER TRAVIS, individually)
16 and derivatively on behalf of MILK)
17 RIVER HUNTING PRESERVE, LLC, a)
dissolved Montana limited liability)
18 company,)
19)
Plaintiff,)
20 vs.)
21)
JOHN KEVIN MOORE, et al.,)
22)
Defendants.)
23

Cause No.: CV-22-74-GF-BMM-JTJ

**BRIEF IN SUPPORT OF
PLAINTIFF'S COMBINED
MOTION FOR DEFAULT
JUDGMENT AND SUMMARY
JUDGMENT QUIETING TITLE**

INTRODUCTION

Plaintiff brings this motion for default judgment and partial summary judgment on Count V of his Verified Complaint for the purpose of quieting title to certain real property (the “Subject Property”) located in Valley County, Montana, in the name of Milk River Hunting Preserve, LLC (“Milk River”). The Subject Property is defined more particularly in Plaintiff’s Statement of Undisputed Facts (“SUF”), filed contemporaneously herewith. (SUF ¶ 1.) This action has become necessary because Milk River was administratively dissolved on December 1, 2011, and the affairs of the company must be wound up and all assets owned by the LLC liquidated. (SUF ¶ 11.) Quieting of title to the Subject Property is further necessary to secure the title insurance required to complete a sale/liquidation of the Subject Property. (ECF 1-1, ¶ 69.)

BACKGROUND

Though the approximately twenty-year history surrounding the operation and status of the ownership of member interests in Milk River Hunting Preserve, LLC, is complicated at best (*see* Statement of Undisputed Facts), the chain of title surrounding ownership of the Subject Property, which is the sole subject of this instant motion, is rather straightforward. On or about October 25, 2001, Plaintiff Christopher Travis (“Travis”) and Defendant John Kevin Moore (“Moore”), along with William Mihram, and Otto Kruppa, dba Aspen Group LTD, entered into a

1 Contract for Deed with James David Girtman and Mildred E. Girtman
2 (“Girtmans”) for the purchase of a large portion of the Subject Property. (SUF ¶ 2).
3 In September of 2003, Mihram and Kroupa quitclaimed their interest in the
4 Contract for Deed to Moore. (SUF ¶¶ 3-4.) This left Travis and Moore as the sole
5 owners of all interests conveyed pursuant to the Contract for Deed.
6

7 On October 8, 2003, Travis, Moore, and Defendant Kirk Scoggins
8 (“Scoggins”) filed Articles of Organization to establish Milk River Hunting
9 Preserve, LLC, as a member managed limited liability company. (SUF ¶ 5.)
10 Shortly thereafter, Travis, Moore and Scoggins assigned any interest they
11 possessed in the Contract for Deed to Milk River. (SUF ¶¶ 6-8.) Milk River
12 satisfied its obligations under the Contract for Deed. Accordingly, a Warranty
13 Deed for the lands subject to the Contract for Deed was recorded on March 18,
14 2004, as Document No. 124634 in the office of the Clerk and Recorder of Valley
15 County, wherein the Girtmans, as Grantors, conveyed their interest in that certain
16 portion of the Subject Property to Travis, Moore, Mihram and Kroupa, as
17 Grantees. (SUF ¶ 9). As a result of the previously recorded Assignments, title to
18 the property vested in Milk River upon the recording of the Warranty Deed. *Id.*
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21 On or about December 5, 2006, Milk River acquired an additional 200 acres
22 of land by way of a Warranty Deed from Grantor Russell Gilbertson. (SUF ¶ 10.)
23 This parcel, combined with the lands previously conveyed by Girtman pursuant to

1 the Contract for Deed, comprises the entirety of the Subject Property. Milk River
2 was administratively dissolved by the Montana Secretary of State on December 1,
3 2011, for its failure to file annual reports. (SUF ¶ 11.)

4 In summary, Milk River obtained fee simple title to the Subject Property
5 pursuant to the Warranty Deeds executed by Girtmans and Gilbertson. At no point
6 has Milk River conveyed its ownership interest in the Subject Property to any other
7 individual or entity, and no individual or entity has appeared in this case and
8 asserted an ownership interest in the Subject Property by way of conveyance,
9 operation of law, or otherwise.
10

11 ARGUMENT

12 Quiet title actions are authorized under Montana law pursuant to Mont. Code
13 Ann. § 70-28-101 for the purpose of determining a person's rights in claiming title
14 to real property as against others' claims to that property. *Myers v. BAC Home*
15 *Loans Servicing, LP*, 2013 U.S. Dist. LEXIS 170533, at *17 (D. Mont. Oct. 23,
16 2013). Specifically, an action may be brought under Montana law “and prosecuted
17 to final decree, judgment, or order by any person or persons, whether in actual
18 possession or not, claiming title to real estate against any person or persons, both
19 known and unknown, who claim or may claim any right, title, estate, or interest
20 therein or lien or encumbrance thereon adverse to plaintiff's ownership or any
21 cloud upon plaintiff's title thereto ... and quieting the title to said real estate.” If a
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1 plaintiff desires to obtain a complete adjudication of title to the real estate, it may,
2 as Plaintiff has done in this case, name as defendants all known and unknown
3 persons who may assert a claim to title to the property. Mont. Code Ann. § 70-28-
4 104.

5
6 This quiet title action is unique in that the United States Department of
7 Justice, and thus the United States government, has asserted a lien against all
8 property owned by Defendant Kevin Moore in Valley County, Montana, which
9 includes his membership interest in Milk River. (SUF ¶ 13.) For this reason,
10 Plaintiff was required by the title insurer to name the United States in this action.
11 (SUF ¶ 24.) As a result, this Court possesses jurisdiction over this matter. 28
12 U.S.C. § 2410(a)(1) provides that the United States may be named a party in a civil
13 action or suit in any district court, or in any State court having jurisdiction of the
14 subject matter ... to quiet title to ... real or personal property in which the United
15 States has or claims a mortgage or other lien.
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18 The Quiet Title Act, 28 U.S.C. § 2409a, is the exclusive means by which
19 claimants may challenge the United States' title to real property. *Kootenai Canyon*
20 *Ranch, Inc. v. United States Forest Serv.*, 338 F. Supp. 2d 1129, 1132 (D. Mont.
21 2004), citing *Block v. North Dakota*, 461 U.S. 273, 286 (1983). Prior to 1972, real
22 property disputes could not be litigated against the United States unless the
23 government initiated the suit. Congress waived sovereign immunity in the Quiet

1 Title Act, allowing plaintiffs to bring suit against the government. *Kootenai*
2 *Canyon Ranch*, 338 F. Supp. 2d at 1133. Any quiet title action involving the United
3 States shall be tried by the Court without a jury. 28 U.S.C. § 2409a(f).

4 **I. DEFAULT JUDGMENT (Non-Appearing Parties)**

5 Defendants Kirk Allen Scoggins, Debra Shrader d/b/a Daytronics, Steven
6 Shrader d/b/a Daytronics, Daytronics, LLC, Michael Welcome, and all Unknown
7 Defendants failed to appear and are in default of these proceedings. (SUF ¶¶ 16-
8 21.) The Clerk of Court issued an Entry of Default for each of these Defendants
9 pursuant to Rule 55(a), Fed. R. Civ. P. *Id.*

10 Pursuant to Rule 55(b)(2), Fed. R. Civ. P., in all cases other than where a
11 plaintiff has made a claim for a sum certain, a party must apply to the District
12 Court for default judgment. Whether to enter default judgment is a decision
13 entrusted to the discretion of the district court. *PacificSource Health Plans v. Atl.*
14 *Specialty Ins. Co.*, 2022 U.S. Dist. LEXIS 87749, at *2 (D. Mont. May 16, 2022).
15 A district court considering whether default judgment is appropriate should
16 consider the following factors: 1) the possibility of prejudice to the plaintiff; 2) the
17 merits of the claims; 3) the sufficiency of the complaint; 4) the amount of money at
18 stake; 5) the possibility of factual disputes; 6) whether default is due to excusable
19 neglect; and 7) the policy favoring decisions on the merits. *Id.* In considering these
20 factors, the Court should accept the factual allegations in the Complaint as true. *Id.*

1 All of these factors weigh in favor of granting default judgment against the
2 Defendants who failed to appear. The possibility of prejudice to Plaintiff in the
3 absence of the granting of default judgment is apparent, as a failure to grant the
4 requested relief would leave Milk River without a remedy. *Id.* Concerning the
5 second and third factors, Plaintiff's allegations in the Verified Complaint are
6 meritorious and sufficiently plead and comply with Rule 8's pleading standards. *Id.*
7 The fourth element is not relevant to these proceedings, as Plaintiff is not seeking a
8 money judgment in Count V of his Verified Complaint.
9

10 Regarding the fifth element, as evidenced by the facts set forth above, there
11 is little to no possibility of a factual dispute regarding ownership of the Subject
12 Property. Concerning the sixth element, no party that has failed to appear has
13 sought to intervene and plead excusable neglect, and there is no such evidence
14 before this Court suggesting the same. Concerning the seventh element, the policy
15 favoring a decision on the merits generally weighs against entering default
16 judgment. *W. Sur. Co. v. Outback Constr., Inc.*, 2023 U.S. Dist. LEXIS 15564, at
17 *5 (D. Mont. Jan. 30, 2023). Yet, this preference is not dispositive. *Id.* Default
18 judgment is appropriate in this matter because the non-appearing Defendants'
19 failure to answer makes any other disposition impractical. *Id.*
20
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22 Finally, Montana law requires that before title may be quieted in Plaintiff
23 Milk River's name against the Defendants who failed to appear in an action,

1 Plaintiff must produce evidence sufficient to prima facie entitle it to relief. Mont.
2 Code Ann. § 70-28-108. The chain of title described above and as set forth in
3 Plaintiff's Statement of Undisputed Facts makes clear that Milk River is the sole
4 owner in fee simple of the Subject Property. No other individual or entity
5 possesses any claim of right to the same. Accordingly, Plaintiff is entitled to
6 default judgment against the non-appearing Defendants quieting title of the Subject
7 Property in the name of Milk River Hunting Preserve, LLC.
8

9 **II. SUMMARY JUDGMENT (Appearing Parties)**

10 **a. Legal Standard.**

11 A party is entitled to summary judgment if it can demonstrate that "there is
12 no genuine dispute as to any material fact and that the movant is entitled to
13 judgment as a matter of law. Fed. R. Civ. P. 56(a). Summary judgment is
14 warranted where the documentary evidence produced by the parties permits only
15 one conclusion. *Anderson v. Liberty Lobby*, 477 U.S. 242, 251 (1986). Only
16 disputes over facts that might affect the outcome of the lawsuit will preclude entry
17 of summary judgment; factual disputes that are irrelevant or unnecessary to the
18 outcome are not considered. *Id.* at 248. "Where the record taken as a whole could
19 not lead a rational trier of fact to find for the nonmoving party, there is no genuine
20 issue for trial, and summary judgment is appropriate. *Zetwick v. Cnty of Yolo*, 850
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1 F.3d 436, 441 (9th Cir. 2017) (quoting *Ricci v. DeStafano*, 557 U.S. 557, 586
2 (2009)).

3 **b. Plaintiff is authorized to bring this quiet title action.**

4 A quiet title action may be brought ... by any person or persons, whether in
5 actual possession or not, claiming title to real estate against any person or persons.
6 Mont. Code Ann. § 70-28-101. Plaintiff has brought this action individually and
7 derivatively on behalf of Milk River Hunting Preserve, LLC, the record owner of
8 the Subject Property. Pursuant to Mont. Code Ann. § 35-8-1104, a member of a
9 limited liability company may maintain an action in the right of the company if the
10 members or managers having authority to bring the action have refused to
11 commence the action or an effort to cause those members or managers to
12 commence the action is not likely to succeed. The statute further requires that the
13 member bringing the derivative action must be a member of the LLC when the
14 action is commenced, as well as at the time of the transaction of which the Plaintiff
15 complains. *Id.* Finally, the statute requires that the Verified Complaint must set
16 forth the effort of the plaintiff to secure initiation of the action by a member or
17 manager or the reasons for not making the effort. *Id.*

21 Plaintiff satisfies all of the criteria to bring a derivative action on behalf of
22 Milk River. Chris Travis was a founding member of Milk River and has continued
23 as a member of the company since October 8, 2003. (SUF ¶ 5.) Defendant Moore,

1 up until recently, was imprisoned and accordingly could not take any actions on
2 behalf of the LLC, and as made abundantly clear by the default of all other
3 individuals and entities who potentially possess a membership interest in the LLC,
4 no one other than Travis has made any attempt to participate in any act on behalf
5 or for the benefit of the LLC, including the commencement of a quiet title action.
6 (SUF 15.) Travis could not conclusively identify any other current member of the
7 LLC who could consent to or provide the authority to prosecute a quiet title action.
8

9 Additionally, the Operating Agreement of the LLC provides Plaintiff the
10 authority to prosecute this action. Section 3.1 of the Operating Agreement states in
11 pertinent part that “the business and affairs of the Company shall be managed by
12 its Members. Except as otherwise provided in this Agreement or by the non-
13 waivable provision of the Act, each Member shall have full and complete
14 authority, power and discretion to manage and control the business, affairs and
15 property of the Company and to perform any and all other acts or activities
16 customary or incident to the management of the Company’s business.” (SUF ¶ 25.)
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19 As an alternative basis for authority, persons winding up the business or
20 affairs of a limited liability company may, in the name of and for and on behalf of
21 the limited liability company, “prosecute and defend suits.” Mont. Code Ann. § 35-
22 8-903(2)(a). As a result of Milk River’s administrative dissolution more than ten
23 years ago, “all the property and assets of a dissolved limited liability company

1 must be held in trust by the members or managers of the limited liability company
2 and the limited liability company may carry on business only as necessary to wind
3 up and liquidate its business and affairs under 35-8-901.” Mont. Code Ann. § 35-8-
4 914(6). Because Milk River has been administratively dissolved and a quiet title
5 action is necessary to wind up the affairs of the company, Plaintiff, as a member of
6 the LLC, is authorized to bring this action.

8 **c. Plaintiff is entitled to judgment quieting title.**

9 Importantly, no party that has appeared in these proceedings has objected to
10 Plaintiff’s request to quiet title to the Subject Property in the name of Milk River.
11 Defendants DOJ and the Montana Commissioner of Securities and Insurance have
12 consented to the filing of this motion. Defendant Moore did not respond to the
13 inquiry, but he affirmatively admits in his Answer to Verified Complaint that the
14 Subject Property is owned in fee simple by Milk River. (SUF ¶ 23.) Accordingly,
15 no issues of material fact exist regarding ownership of the Subject Property.
16

17 Moreover, if Moore submits a response to this motion contrary to what he
18 has already admitted in his Answer, summary judgment is still appropriate. As
19 discussed above in connection with Plaintiff’s default judgment motion, Plaintiff
20 has provided this Court with prima facie proof by chain of title that Milk River is
21 the sole fee simple owner of the Subject Property. Accordingly, Plaintiff’s motion
22 for summary judgment should be granted.
23

1 **d. Encumbrances**

2 Plaintiff directs the Court to two encumbrances that it must consider prior to
3 entering judgment in favor of Plaintiff. First, in September or October of 2016,
4 Moore, on behalf of Milk River but without the knowledge or authority of its other
5 members, entered into an agricultural lease with Russ Gilbertson for a term of five
6 years for \$25,000, all paid up front. More than five years have elapsed since the
7 entering into of the Lease. (SUF ¶ 14.) Accordingly, though Plaintiff initially
8 requested in its Verified Complaint that that Court recognize the agricultural lease
9 (ECF1-1, pg. 17), the undisputed facts now reflect that the lease has been
10 terminated pursuant to its own terms. This encumbrance should not be recognized.
11

12 Second, the Court must consider the lien filed in Valley County by the
13 Department of Justice against Defendant Moore. Because the Subject Property is
14 owned by Milk River and not Defendant Moore in his individual capacity, the
15 Court should find that the lien does not encumber the subject real property.
16 However, the granting of summary judgment on this issue should not preclude the
17 DOJ from asserting its lien against all personal property owned by Moore in Valley
18 County, including but not limited to his membership interest in Milk River, and
19 correspondingly the sale proceeds that may be allocated to Moore upon liquidation
20 of the company's assets. This is an issue that must be resolved between the DOJ
21 and Moore independent of this request for relief.
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23

1 **CONCLUSION**

2 Based upon the foregoing, Plaintiff respectfully requests Court 1) that the
3 Court grant default judgment in favor of Plaintiff and against all known non-
4 appearing Defendants and Unknown Defendants; 2) that the Court grant partial
5 summary judgment in favor of Plaintiff and against the Defendants who have
6 appeared in this matter; 3) that the Court issue an order quieting title to the Subject
7 Property in the name of Milk River Hunting Preserve, LLC, with no
8 encumbrances; 4) that the Court acknowledge that its order does not affect the
9 DOJ's lien against all real and personal property owned by Moore in Valley
10 County, including his membership interest in Milk River; and 5) that Plaintiff be
11 awarded such other and further relief as the Court may deem just and equitable.
12

13
14 DATED this 8th day of August, 2023.

15 CHRISTENSEN FULTON & FILZ, PLLC

16 /s/ Joseph L. Breitenbach
17 Attorneys for Plaintiff
18

19 **CERTIFICATE OF COMPLIANCE**

20 Pursuant to D. Mont. Local Rule 7.1(d)(2)(E), I certify that this brief
21 complies with the word limits set out in that rule. Excluding the caption, certificate
22 of service and compliance, and based on the count provided by counsel's word
23 processing system, this brief contains 2,851 words.

DATE: August 8, 2023

/s/ Joseph L. Breitenbach

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CERTIFICATE OF SERVICE

I, the undersigned, a representative of the law firm of Christensen, Fulton & Filz, P.L.L.C., hereby certify that I served a true and complete copy of the foregoing **BRIEF IN SUPPORT OF PLAINTIFF'S COMBINED MOTION FOR DEFAULT JUDGMENT AND SUMMARY JUDGMENT QUIETING TITLE** on the following persons by the following means:

- 1-6 CM/ECF
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DATE: August 8, 2023

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